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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

JUN 22 1993

need for additional time to implement cable rate regulation. Unfortunately, the Order may not accomplish its intended result. The problem stems from the fact that the June 15 Order did not expressly preempt franchise notification requirements. In fact, numerous cable franchises have lengthy notice requirements which, if adhered to, would foreclose operators from the benefits of the Commission's extension.

Although a 30-days notice requirement is common in the industry, numerous cable franchises require substantially longer advance notice. As Exhibit 1 illustrates, Continental has dozens of franchises requiring 60 or 90 days advance notice. In the case of a 90-days notice, rate changes would need to be announced next week to meet the October 1 effective date.

Arguably, the Commission resolved this issue in its original May 3 Report and Order. Nevertheless, Continental believes that a simple statement by the Commission now (perhaps as part of the Commission's ongoing "question and answer" process) could avoid much uncertainty and conflict later.

It appears that the Commission's new rate regulations are, in fact, based upon 30-days advance notification. Section 76.933 provides that increases in basic rates can go into effect 30 days after the franchising authority is notified. Section 76.964 similarly provides that the franchising authority must be notified 30 days in advance of increases in cable programming

rates. Section 76.932 adopts the very same 30-day timeframe for subscriber notification. That schedule mirrors the requirements set forth in Section 76.309(c)(3)(A)(2) of the Commission's new customer service standards. The Report and Order recognizes the benefit of the 30-day period. Report and Order at ¶124.

Although these various provisions allow cable operators to voluntarily provide a longer notification period, that does not mean that franchising authorities can compel a longer period. Indeed, such a requirement would conflict with the Commission's regulatory scheme. The Commission established an elaborate mechanism in Section 76.933, whereby franchising authorities can stay rate increases for an additional 90 days (in "benchmark" cases) or 120 days (in the case of "cost-of-service" cases). This stay mechanism is inconsistent with an initial notice requirement exceeding 30 days.<sup>3/</sup>

In any event, the Commission's refund regulations preclude any possible justification for requiring a longer notification period. Section 76.942 provides for refunds of excessive rates for basic service and associated equipment running from the effective date of regulation or one year, whichever is shorter. Thus, there is no conceivable reason why a franchising authority

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<sup>3/</sup> See Report and Order at ¶120 (the 30-day period provides "a sufficient amount of time to obtain the views of interested parties and to make an informed and reasoned judgment on proposed rates.")


needs to know of a rate change long before its scheduled implementation. The complaint and refund procedures for cable programming services similarly preclude the need for more than a 30-day advance notice. See 47 U.S.C. §§ 76.953, 76.961.

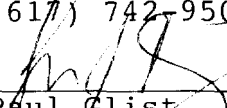
Finally, requiring a lengthy notice period at this time is particularly inappropriate given the extension of the rate freeze to November 15. Cable operators are given authority during the freeze to make unilateral rate adjustments, as long as the adjustments are "revenue-neutral." Under this approach, neither franchising authorities nor cable subscribers have any need or use for a lengthy advance notice of any October 1 rate adjustment.

Conclusion

For the foregoing reasons, Continental respectfully requests clarification regarding the Commission's June 15 Order to make clear that franchise provisions requiring more than 30-days advance notice of a rate change are preempted.

Respectfully submitted,

  
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Exhibit I

CONTINENTAL CABLEVISION  
90 AND 60 DAY FRANCHISE  
NOTIFICATION REQUIREMENTS<sup>1/</sup>

90 days

Fresno, CA  
Madera, CA  
Fresno County, CA  
Clovis, CA  
Tulare, CA  
Visalia, CA  
Lemont, IL  
Rolling Meadows, IL  
Buffalo Grove, IL  
Hoffman Estates, IL  
Elk Grove Village, IL  
Kettering, OH  
Centerville, OH  
West Carrollton, OH  
Miamisburg, OH  
Moraine, OH  
Oakwood, OH  
Bellbrook, OH  
Springboro, OH  
Waynesville, OH  
Clearcreek Township, OH  
Corwin Village, OH  
Clayton Village, OH

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<sup>1/</sup> The time stated is for notification to the franchise authority. In some instances the time period is shortened if the rate increase is at or below changes in the consumer price index. In other cases, the time period is shortened for subscriber notification.

60 days

Los Angeles County, CA  
Tustin, CA  
Yuba County, CA  
Beale Air Force Base, CA  
Sutter County, CA  
Marysville, CA  
Yuba City, CA  
San Joaquin County, CA  
Lathrop, CA  
Henrico County, VA  
Goochland County, VA  
Town of Ashland, VA  
Hanover County, VA  
Richmond, VA  
York County, VA  
James City County, VA  
Jacksonville, FL  
Crest Hill, IL  
Frankfort, IL  
New Lenox, IL  
Rockdale, IL  
Mantano, IL  
Peotone, IL  
Hampstead, NH  
New Castle, NH  
Plaistow, NH  
Stratham, NH  
Arlington, MA  
Milton, MA  
Quincy, MA  
Scituate, MA  
Marlborough, MA  
Newbury, MA  
Newburyport, MA  
W. Newbury, MA  
South Charleston, OH